

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CALIFORNIA DEPARTMENT OF WATER  
RESOURCES,

Plaintiff,

No. CIV S-05-0518 GEB EFB

vs.

POWEREX CORP., a Canadian Corporation,  
dba POWEREX ENERGY CORP.,

ORDER

Defendant.

\_\_\_\_\_ /  
This matter was before the court on May 27, 2009, for further hearing on defendant's motion to compel additional production of documents responsive to its Request for Production of Documents (Set One), served upon plaintiff California Department of Water Resources ("CDWR"). Dckt. No. 113. Gary Alexander, Danette Valdez, and Annadel Alembras appeared on behalf of plaintiff. Andrew Edison, John Mason and Shelby Kelley appeared on behalf of defendant. Thomas Greene also appeared on behalf of former Governor Gray Davis.

For the reasons stated on the record, IT IS HEREBY ORDERED that:

1. Defendant's motion to compel, Dckt. No. 113, is granted in part and denied in part.
2. Plaintiff California Department of Water Resources in its entirety, without limitation to its California Energy Resources Scheduling ("CERS") Division, and expressly including the

1 State Water Project, shall produce all responsive “CERS-related” documents, for the year 2001,  
2 which are in plaintiff’s possession, custody or control. This production, which shall be  
3 completed on or before June 30, 2009, shall include certification by CDWR, under penalty of  
4 perjury, that it has conducted a reasonable search and produced all responsive documents.  
5 Plaintiff shall have a continuing obligation to supplement this production if additional documents  
6 are discovered in the future.

7 3. Plaintiff CDWR shall produce, on or before June 30, 2009, all responsive documents  
8 related to its long-term energy contracts for the year 2001. This production shall extend beyond  
9 plaintiff’s existing production of executed long-term contracts, requests for bids for long-term  
10 contracts, and responses to those bids, to include all documents containing or referencing  
11 plaintiff’s decision-making process in selecting, rejecting or entering into long-term energy  
12 contracts in 2001. Responsive documents that are subject to the protective order entered in the  
13 Federal Energy Regulatory Commission (“FERC”) proceedings, specifically Dckt. No. EL-02-  
14 60-003 and EL-02-62-003, shall be produced for “attorneys eyes only” in this litigation, and  
15 shall be subject to any further protective order that might be entered in this civil action either  
16 pursuant to stipulation by the parties herein or by motion. This production is also subject to the  
17 further qualification noted in paragraph 4 *infra*.

18 4. The court will defer final consideration of defendant’s motion to compel production of  
19 documents for which plaintiff has asserted the official information privilege, including  
20 responsive documents within the above-noted FERC proceedings and protective order for which  
21 plaintiff asserts the privilege. The court’s consideration of this matter is deferred pending  
22 completion by the California Secretary of State of its review and production of documents  
23 responsive to defendant’s subpoenas served March 16, 2009, and April 9, 2009; the Secretary of  
24 State has estimated that this task will be completed by June 30, 2009.

25 5. This court will hear defendant’s motion to compel production of documents for which  
26 plaintiff has asserted the official information privilege, on Wednesday, July 15, 2009, at 10:00

1 a.m., in Courtroom No. 25. The parties shall file a supplemental joint statement on or before  
2 July 7, 2009, addressing any remaining issues concerning plaintiff's withholding of responsive  
3 documents based on the official information privilege.

4 6. The parties agreed at the hearing that they had informally resolved all other matters  
5 presented by this motion.

6 IT IS SO ORDERED.

7 DATED: June 4, 2009.

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EDMUND F. BRENNAN  
UNITED STATES MAGISTRATE JUDGE